STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 4, 2004
v	No. 244556 Calhoun Circuit Court
MARY MARIE WESLEY, Defendant-Appellant.	LC No. 02-001343-FH

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right her convictions of two counts of resisting and obstructing a police officer, MCL 750.479, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The evidence showed that, during the stop of a vehicle in which defendant was a passenger, defendant disobeyed commands of state troopers, approached the troopers in a belligerent manner, and physically resisted a trooper's attempts to handcuff her. She maintained that she attempted to comply with the troopers' commands, but that they did not give her sufficient time to comply. Defendant requested that in addition to instructing the jury on the charged offenses, the trial court also instruct on the offenses of assault and battery, MCL 750.81, and being a disorderly person by being intoxicated in a public place, MCL 750.167(1)(e). The trial court denied the request on the ground that those crimes were not necessarily included lesser offenses. The jury found defendant guilty as charged.

We review a claim of instructional error de novo. *People v McKinney*, 258 Mich. App. 157, 161-162; 670 N.W.2d 254. MCL 768.32(1) permits instructions on necessarily included lesser offenses but not on cognate lesser included offenses. *People v Cornell*, 466 Mich 335, 356-357; 646 NW2d 127 (2002); *People v Reese*, 466 Mich 440, 446; 647 NW2d 498 (2002). A necessarily included lesser offense is one which must be committed as part of the greater offense. It would be impossible to commit the greater offense without first having committed the lesser offense. *People v Bearss*, 463 Mich 623, 627; 625 NW2d 10 (2001). A cognate lesser offense is one that shares some common elements with and is of the same class as the greater offense, but also has some elements that the greater offense lacks. *People v Perry*, 460 Mich 55, 61; 594 NW2d 477 (1999). A requested instruction on a necessarily included lesser offense is proper "if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and it is supported by a rational view of the evidence." *Reese*, *supra*.

The elements of resisting and obstructing a police officer are: (1) the conduct alleged obstructed (2) a police officer (3) in his prescribed duties, and (4) the conduct was done knowingly and willfully. See MCL 750.479(1). Knowingly and willfully means that the defendant intended to do the act to a police officer and did so knowing that the person was a police officer. *People v Gleisner*, 115 Mich App 196, 198-199; 320 NW2d 340 (1982). The offense requires that a defendant oppose a police officer by actual physical interference or by expressed or implied threats of physical interference. *People v Vasquez*, 465 Mich 83, 100, 115; 631 NW2d 711 (2001). "A simple criminal assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Avant*, 235 Mich App 499, 506 n 2; 597 NW2d 864 (1999). "A battery is an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person." *People v Reeves*, 458 Mich 236, 240 n 4; 580 NW2d 433 (1998). A disorderly person is one who is "intoxicated in a public place and who is either endangering directly the safety of another person or of property or is acting in a manner that causes a public disturbance." MCL 750.167(1)(e).

First, defendant argues that the trial court erred by failing to instruct the jury on the offenses of assault and battery and being a disorderly person. We disagree. That a defendant willfully and knowingly physically interferes or threatens to physically interfere with a police officer who is attempting to perform his duties is an element of resisting and obstructing a police officer, but not of assault and battery. The element of defendant's knowledge of the officers' identity was not in dispute, so an instruction on assault and battery was not warranted. *Reese*, *supra*. In addition, it is possible to commit the offense of resisting and obstructing a police officer without being intoxicated in a public place. The offense of being a disorderly person by virtue of being intoxicated in a public place is not a necessarily included lesser offense of resisting and obstructing a police officer, so an instruction on that offense was not permitted. *Perry*, *supra*.

Next, defendant argues without citation to appropriate authority that the trial court erred by instructing the jury that it could find her guilty of two counts of resisting and obstructing a police officer. We disagree. Defendant did not object to the instructions, so, absent plain error, she is not entitled to relief. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). "A party may not merely announce a position and leave it to us to discover and rationalize the basis for the claim." *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997). Defendant physically interfered with each trooper's attempts to perform his duties. The instructions fairly presented the issues and sufficiently protected defendant's rights. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). No plain error occurred. *Carines*, *supra*.

Affirmed.

/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood